



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed July 11, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services in regard to Medical Assistance, a hearing was held on January 06, 2016, at Wausau, Wisconsin.

The issue for determination is whether the agency met its burden to support its claim of MA overpayments from 10/1/13 to 9/30/14, and from 10/1/14 to 2/28/15.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner ([REDACTED]) is a resident of Marathon County.

- [REDACTED]
2. The agency contracted with investigation firm O'Brien and Associates. The firm determined after investigation that overpayments of MA had occurred from 10/1/13 to 9/30/14, and from 10/1/14 to 2/28/15.
 3. Petitioner appealed.
 4. The evidence presented at hearing pertained to petitioner's financial condition from February 16 to March 3, 2015.

DISCUSSION

The agency has the burden of proof in an overpayment case. Any finding of fact in an administrative decision must be based on substantial evidence. *Gehin v. WI Group Ins. Bd*, 2005 WI 16 at ¶ 7. The Supreme Court explained in *Gehin* that "Substantial evidence has been defined in the case law as 'that quantity and quality of evidence which a reasonable man could accept as adequate to support a conclusion.' Cases state that substantial evidence is more than 'a mere scintilla' of evidence and more than 'conjecture and speculation.'" *Id.* at ¶ 48 (other citations omitted).

In this case, the evidence presented by the O'Brien firm at hearing related to petitioner's financial condition at a snapshot in time in 2015. The investigator's efforts were limited to Internet searches from his office about current assets and the like. Nothing uncovered by the O'Brien firm was sufficient to amount to substantial evidence and did not directly pertain to the overpayment periods. Indeed, it was only remotely relevant at all. This was not a close case and can only be described as shoddy and an embarrassment for the O'Brien firm and the agency.

CONCLUSIONS OF LAW

The agency failed to meet its burden.

THEREFORE, it is

ORDERED

This matter is remanded to the agency with instruction to reverse the determination of overpayment and cease collection of funds pertaining to the claims. These actions must be completed within 10 days of this decision.


REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

 You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 8th day of January, 2016

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 8, 2016.

Marathon County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability